

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Cupp et al.
Appl. No.: 10/037,941
Conf. No.: 7917
Filed: January 3, 2002
Title: DENTAL DIET FOR REDUCING TARTAR
Art Unit: 1761
Examiner: K. Hendricks
Docket No.: 115808-330

AFFIDAVIT UNDER 37 C.F.R. § 1.132

Sir:

I hereby state as follows:

1. My education and professional experience is attached with my curriculum vitae as Exhibit B.

2. I am one of the named inventors of the above-identified patent application and am therefore familiar with the inventions disclosed therein.

3. I have reviewed the outstanding Office Action dated September 2, 2005 pending against the above-identified patent application. In addition to considering the outstanding Office Action, I have reviewed the references cited therein, i.e., EP 0645095 to Collings et al. ("*Collings*") and U.S. Patent No. 5,431,927 to Hand et al. ("*Hand*"), as well as the pending claims. I believe that the obviousness rejection of Claims 1-6, 13-17, 19, 21-24, 26 and 29 based on *Collings* and *Hand* is incorrect and based on a misunderstanding of the references and the pending claims. The basis for my opinion is set forth below.

4. The present claims are directed to, in part, a dried pet food with an unstriated appearance. This unstriated appearance results from an inner cellular structure that is created, for example, by a non-laminar flow extrusion process.

5. Formation of the claimed dried pet food does not occur through a laminar flow extrusion process, but rather through an extrusion process that is more turbulent in nature. As a result, the dried pet food is not striated, or at least, does not have any visible striations. This turbulent process also results in a dried pet food having a cellular structure that includes microscopic air pockets. Because of the microscopic air pockets of this unstriated dried pet food, the inner surface will have a fine, sandpaper-like appearance and a dense, foam-like structure that is in contrast to a laminar-like structure. This cellular structure improves the tartar reducing properties of the product by applying a mechanical scraping action to the teeth. I believe that this unstriated appearance and inner cellular structure resulting from a turbulent flow process significantly affects the performance of the dried pet food as compared to other products of a striated appearance. Moreover, based on rheological and acoustic testing of Applicants' unstriated product versus other striated products, it is my opinion that these products are clearly distinguishable from those in the cited references and present different functionalities in terms of dental plaque and tartar reduction.

6. The Applicants have conducted a number of experimental studies to demonstrate the desirable and advantageous effects of the claimed invention, which are disclosed by the examples in the specification. For example, the results of Examples 3 and 4 demonstrate significantly improved cleaning of dogs' teeth with the product of the present invention over standard dry dog food.

7. As one having ordinary skill in the art, I believe that *Collings* and *Hand* each disclose products having different appearances and properties. While *Collings* is directed toward an unstriated dog food product, *Hand*, by contrast, is directed toward an expanded, striated structural matrix, which, in my opinion, teaches away from *Collings*. Based on the discussion in the above paragraph, each product will inherently function differently because of their different cellular structures.

8. For the foregoing reasons, as one having ordinary skill in the art, I believe that *Collings* and *Hand* fail to render the claimed subject matter obvious because the references teach away from each other by disclosing distinct products having different cellular structures.

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18, United States Code, and that willful false statements may jeopardize the validity of this patent and any patent issuing therefrom.

Date: January 26, 2006

Carolyn J. Cupp

Print Name: Carolyn J. Cupp